
MEETING MINUTES

November 12, 2014

I. Call to Order & Orders of the Day

Roll Call

PRESENT: Chair Michael Smith, Vice Chair Rolanda Pierre Dixon, Commission Members Linda Edgeworth, Leon Louie, and Chris Peacock

ABSENT: All Present.

STAFF: Deputy City Attorney Arlene Silva, City Clerk Toni Taber, Assistant City Clerk Tom Graves, Investigator/Evaluator Steven Miller (via teleconference) and Deputy City Clerk Ruth Krantz

OTHER: Noelia Espinola , Court Reporter with Advantage Reporting Services

Call to Order

The members of the San José Ethics Commission convened at 5:37 p.m. in Room W-262 of City Hall, 200 E. Santa Clara Street, CA 95113.

Orders of the Day

Action: Upon motion by Vice Chair Rolanda Pierre Dixon, seconded by Commissioner Leon Louie and carried unanimously, the Commission approved the adoption of the November 12, 2014 agenda. (5-0.)

II. Closed Session - None

III. Hearings

- A. Hearing on Complaint filed by Long Nguyen against Maya Esparza alleging violations of Title 12 of the San Jose Municipal Code (Independent Investigator/Evaluator)

Document Filed: Report from Hanson Bridgett LLP dated November 4, 2014 regarding Long Nguyen vs Maya Esparza addressing the alleged violation of Title 12.06.101 of the San José Municipal Code – Disclosure of Electioneering Communications; complaint filed October 14, 2014.

Discussion: Chair Michael Smith summarized the hearing procedures and opened the public hearing. All members of the Commission were present, with Commissioner Edgeworth recused. This complaint alleges a violation by Maya Esparza; Complainant Long Nguyen alleges that the Respondent violated Section

12.06.1010.A of the San José Municipal Code, which requires that a lawn sign like the one at issue include a disclaimer that states “paid for by” immediately followed by the name, street address, and city of the candidate or committee that paid for the lawn sign. The Complainant alleges that Respondent’s lawn sign was insufficient in that it did not include a street address or city, but only included the Respondent’s FPPC identification number. In addition, the Complaint alleged “unfair” violations of unspecified sections of Title 12 relating to improper placement of the Respondent’s lawn signs on top of her opponent’s signs.

Complainant Long Nguyen, Respondent Maya Esparza, witnesses nor members of the public were present for this hearing.

The Evaluator Steve Miller presented his report, addressing his conclusion that the first allegation constitutes a violation of the Municipal Code, in that the disclaimer on the lawn sign did not include the correct information required by Title 12. Upon notification of the complaint, Respondent took prompt action to remedy any violation. Therefore, it is the recommendation of the Evaluator that the Commission find that sufficient mitigating factors exist in the first matter, such that it should close the file and take no further action. With regard to the second allegation, it was concluded that despite the Complainant’s reference to a violation of Title 12, the allegations of improper placement are outside the jurisdiction of the Ethics Commission, and therefore outside the authority of the Commission to investigate.

Staff responded to Commission questions.

Motion: Chair Michael Smith moved that, based upon a preponderance of the evidence, a violation has occurred with regard to use of the proper "paid for by" disclaimer. Vice Chair Rolanda Pierre Dixon seconded the motion.

Action: On a call for the question, the motion carried unanimously indicating concurrence with the Evaluator’s report that a violation of the Municipal Code has occurred. (4-0-0-1. Recused: Edgeworth.)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Louie	So certified
Commissioner Edgeworth	Recused
Commissioner Peacock	So certified

Motion: Vice Chair Rolanda Pierre Dixon moved that due to sufficient mitigating circumstances, no penalties be imposed or further action taken. Commissioner Leon Louie seconded the motion.

Amended Motion: Chair Michael Smith requested to amend the motion to include that the file be closed. Commissioner Leon Louie and Vice Chair Rolanda Pierre Dixon approved the amended motion.

Action: On a call for the question, the Evaluator's report was adopted, finding that due to sufficient mitigating circumstances no penalties be imposed, no further action taken and the file be closed. (4-0-0-1. Recused: Edgeworth.)

Each Commissioner certified that he or she personally heard the testimony at the hearing and reviewed the entire evidence in the record.

Chair Smith	So certified
Vice Chair Pierre Dixon	So certified
Commissioner Louie	So certified
Commissioner Edgeworth	Recused
Commissioner Peacock	So certified

Action: Upon motion by Vice Chair Rolanda Pierre Dixon, seconded by Commissioner Leon Louie and carried, the Commission moved to direct the City Attorney to draft a Resolution on the Commission's Findings, and further, that the Commission authorizes the Chair to approve and sign the resolution. (4-0-0-1. Recused: Edgeworth.)

IV. Consent Calendar

- A. Approve the Minutes of September 10, 2014 – Regular Meeting
Deferred to December 10, 2014
- B. Approve the Minutes of October 8, 2014 – Special Meeting

Documents Filed: Draft Ethics Commission minutes for the October 8, 2014 meeting.

Action: Upon a motion by Chair Michael Smith, and seconded by Commissioner Leon Louie and carried, the Commission approved the meeting minutes of October 8, 2014. (4-0-0-1. Recused: Edgeworth)

V. Reports

- A. Chair –Chair Smith reported that three complaints were filed on October 14, 2014; one hearing will be held tonight. The Evaluator has asked that an extension be granted for the other two, as witnesses were not available until after the election. Timing will probably require these hearings be held after the December meeting, with another open investigation to be considered within the next month. A discussion regarding what recourse we have, above and beyond issuance of a subpoena, when someone tries to stall the hearing before an investigation was recommended for a future discussion.

- B. City Attorney – None
 - 1. Legislative update
- C. City Clerk – Assistant City Clerk Tom Graves offered that Mayor and open Council seats have been decided. Determination on handling Councilmember Chu's vacancy will be decided at the Council meeting of December 2, 2014.
 - 1. Legislative update – None
 - 2. Status of compliance with Commission resolutions – None
 - 3. Status report on filings (Form 700, Campaign Statements, Lobbyists) -
City Clerk Toni Taber offered that campaign statements are not ready since it is too soon after the election, but the candidates 2nd pre-election filings were on time. Lobbyists is a work in progress, but compliance looks good thus far. The ad required by MC 12.06.920 that lists total campaign contributions and expenditures has been run.
 - 4. Elections update – City Clerk Toni Taber commented that an official resignation from Kansen Chu is required. The Council will either do an appointment or more likely a special election, at a cost of \$630,000 per election per district.
- D. Investigator/Evaluator – None

VI. Old Business

- A. Status, review and possible action on Gift Ordinance and Frequently Asked Questions Sheet (City Attorney)

Action: Item deferred to next meeting scheduled for December 10, 2014.

- B. Discussion, review and possible action on Open Government Legislation and the effects it will have on the Ethics Commission (City Attorney)

Documents Filed: Ordinances 29460 and 29461.

Discussion: Deputy City Attorney Arlene Silva offered that this could be added to the standing items for continued discussion regarding potential amendments to the ordinance or resolution in more clearly defining new additions to Title 12.

- C. Status, discussion and possible action on extension of current contract for Independent Evaluator/Investigator and RFQ for new contract commencing July 1, 2015 (City Clerk/City Attorney)

Discussion: Deputy City Attorney Arlene Silva noted that she will be communicating with Hanson Bridget and drafting an amendment to extend the contract to June 30, 2015, which will need final approval by the City Council in December 2014.

Deputy City Attorney Arlene Silva indicated some changes will be required in both formatting and content of the RFQ/s.

Commissioner Chris Peacock and Vice Chair Rolanda Pierre Dixon indicated that for the sake of competition and having open options, three RFQ's, one for the Evaluator, one for the Investigator and a combined RFQ for the Evaluator/Investigator be considered.

Chair Smith and Commissioners Leon Louie and Linda Edgeworth spoke to the merits of providing a single RFQ that would combine the requirements of the Evaluator and Investigator.

Motion: Commissioner Chris Peacock moved approval of seeking three RFQ's. Vice Chair Rolanda Pierre Dixon seconded the motion.

Action: On a call for the question, the motion failed. (2-3. Noes: Edgeworth, Louie, Smith.)

Motion: Commissioner Leon Louie moved approval of a single Evaluator/Investigator RFQ. Commissioner Linda Edgeworth seconded the motion.

Action: On a call for the question, the action to approve a single Evaluator/Investigator RFQ was approved. (3-2. Noes: Pierre Dixon, Peacock.)

Commissioners requested that this RFQ offer enhanced clarity and less general information, including greater delineation in functions and roles of the Evaluator/Investigator. It should indicate the Evaluator/Investigator's need to do more than just evaluate complaints, but to conduct full-on investigations and either independently hire or have investigators in their firm to follow up on minute details and to further demonstrate their understanding of the deadlines involved. Commissioners were asked to provide Ruth Krantz of the Clerk's Office with any additional suggestions which will be forwarded on to Deputy City Attorney Arlene Silva.

- D. Discussion, review and possible action on Form 500 language to ensure timely submittal

Documents Filed: Blank Form 500 and San José Municipal Code (SJMC) section 12.06.500 *et seq.*

Discussion: City Clerk Toni J. Taber offered that there is still considerable work to be done post mortem on the election. She highlighted some changes to be made on the current Form 500, including use of the term "I elect to opt out", which is not used in the ordinance; and the amendment section to read "amendment not to be submitted beyond 14 days after the election". Discussion followed regarding filer's use of the official website in downloading Form 500's, rather than unofficial forms

available on the internet, and the Clerk's Office carefully policing their acceptance. The potential for electronic filing in alleviating this issue was discussed with City Clerk Taber's suggestion on getting a quote from Netfile. She added that the recommended changes to the Form 500 should be available by the December 10, 2014 meeting.

VII. New Business – None

VIII. Public Comment – None

IX. Future Agenda Items and Adjournment

The next regular meeting is Wednesday, December 10, 2014 at 5:30 p.m. in City Hall, Wing Room 262.

- Establishment of an Ethics Commission ad hoc Subcommittee to explore opportunities for outreach to ethnic and specialized media regarding campaign and ethics regulations and policies per the Commission's FY2015 work plan
- Gift Ordinance and FAQs
- Open Government Legislation
- Approval of Meeting Minutes
- Contract and RFQ for Evaluator/Investigator
- Changes to Form 500 form/instructions and possible changes to SJMC

The meeting was adjourned at approximately 7:20 p.m.



MICHAEL SMITH, CHAIR

ATTEST:
ETHICS COMMISSION SECRETARY



TONI J. TABER, CMC
CITY CLERK